IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

MACA.No. 743 of 2006()
&
CROSS OBJECTION NO.84 OF 2006

OPMV.420/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT/3RD RESPONDENT:-

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP. BY ITS ASST.MANAGER, REGIONAL OFFICE,
M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2 RESPECTIVELY:
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1. SHAMEER, AGED ABOUT 25 YEARS,
S/O.UMMER, KOORIMANNIL HOUSE, NARIKUNDU P.O.,
AMBALAVAYAL, THOMATTUCHAL VILLAGE,
S.BATHERY TALUK, WAYANAD.

2. ALI, S/O.ABOOBACKER, AGED ABOUT 41
YEARS, OZHIKKAPARAMBIL HOUSE, KARADIPPARA P.O.,
THOMATTUCHAL VILLAGE, S.BATHERY TALUK,
WAYANAD.

3. N.HAMSA, S/O.AYIMUTTI MESIRI,
NADATHODI HOUSE, RIPPON, MEPPADI P.O.

BY ADV. SRI.S.EASWARAN FOR R1
SRI.GRASHIOUS KURIAKOSE FOR R3
SMT.CELINE JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.743 OF 2006 (C)
&
CROSS OBJECTION NO.84 OF 2006

Dated this the 23rd day of July, 2007

J U D G M E N T

KOSHY,J.

A 21 year old youngster met with a motor accident and as a result of which he became disabled. Ext.A5 MRI report shows the following injuries:

> "Fracture of D10, D11, D12 vertebrae Retroppulsion of the fractured fragments is causing severe canal narrowing and cord compression at D10, D11 levels. Traumatic disherination at D10-11 is also contributing to cord compression. Compressed cord reveals abnormal signal intensity on T2 images suggestive of cord edema."

The reference card shows that he was admitted on 16.4.2001 as an impatient in the Medical College Hospital and discharged on 12.6.2001. The reference card further shows that the

fractures D10, 11, 12 on vertebra with paraplegia. Ext.A8 shows that he was again admitted on 2.8.2004 and discharged on 11.11.2004 for head and urinary tract infection. Ext.A2 is the disability certificate. The disability certificate reads as follows:

1. Total paraplegia : 30% (Thirty percentage)
2. Loss of sexual function : 15% (Fifteen percentage)
3. Loss of functions of
   Bowel and bladder : 30% (Thirty percentage)
4. Loss of sensation : 15%(Fifteen percentage).

So his total percentage of permanent disability is assessed as 90% (Ninety percentage)

Tribunal calculated compensation for 90% disability and an amount of Rs.5,00,000/- was awarded as compensation which is as follows:

Transport Charges	Rs. 4,000.00
Extra nourishment	Rs. 10,000.00

Bye - standers	Rs. 10,000.00
Medical expenses	Rs. 50,000.00
Pain and suffering	Rs.1,00,000.00
Disability 90%	Rs.3,06,000.00
Future treatment	Rs. 10,000.00
Disfiguration	Rs. 10,000.00
Total	Rs.5,00,000.00

2. Insurance company filed appeal mainly on two grounds. First ground was that in the pleading it was stated that autorickshaw was being driven without proper licence and valid permit. Even though such a pleading was taken absolutely no evidence was adduced in that regard and no evidence was adduced to show that the driver of the auto had no licence. Ext.A5 is the charge sheet. In the charge sheet also driver of the auto was not charge sheeted for not having a licence for running the auto. If he is not having permit or licence, he would have been charge sheeted for that offence.

Such a point was not seen argued at the time of hearing and such an argument was not mentioned in the award. In the appeal no averment is made to the effect that the above part was argued but it was not considered by the tribunal. It is settled law if Insurance company denies liability due to breach of condition of policy, it is for the Insurance company not only to specifically plead the same but also to prove the same. Insurance company did not prove the above contention in this case. In this connection we refer to the Hon'ble Apex Court decision in ***National Insurance Company v. Swaran Singh and others (2004 A.I.R. SCW 663).*** Since the breach of police conditions was not proved or argued before the tribunal, we see no merit in the appeal.

3. The second contention is that amount awarded is excessive. It is come out in evidence that the applicant was an Electronic certificate holder and according to him he was earning Rs.3,000/- per month, that is, at the age of 21.

Tribunal has not accepted the same deposition. But Rs.20,000/- was fixed as his annual income. We note that in 1994, when Second schedule was framed annual income for a non-earning person was fixed as Rs.15,000/-. Here the accident occurred on 15.4.2001 after seven years of framing of the Second schedule. The injured person is an electronic certificate holder and according to him at that time also he was studying and was earning Rs.3,000/- per month by part time job. Tribunal has fixed only Rs.20,000/- as annual income for a qualified person in 2001. In the cross appeal filed by the appellant contending that considering future prospects, tribunal ought have fixed at least Rs.3,000/- per month, that is, Rs.36,000/- per year. We are of the view that in the absence of data, no interference is required in the notional income assessed by the tribunal. It is also contended by the appellant Insurance company that the assessment of 90% disability is not correct but the medical certificate assessing disability was marked with consent. There was no request for examining the

claimant by the Medical Board. The tribunal has seen the person. When there is 30% total paraplegia and there was loss of function of bowl bladder and loss of sensation with complete loss of sexual activities, assessment of 90% disability by the Doctor cannot be stated to be excessive. In the cross objection according to the claimant, considering these difficulties he cannot get any employment anywhere. There is 100% loss of earning capacity and tribunal ought have granted compensation for 100% disability. We see no ground to interfere with the assessment of disability by the tribunal. It is submitted that tribunal has awarded for pain and sufferings Rs.1,00,000/-. He is a person who cannot move from his bed and he is completely bedridden. He has to be treated and take care of continuously in view of the difficulties in bladder movements, loss of functions of bowel and bladder. It is submitted by the counsel for the claimant that Rs.10,000/- fixed for future treatment is inadequate considering the present treatment expenses. For each and every time he needs help

of somebody. For loss of amenities no amount was granted. Considering the injuries on the vertebra and head injuries and considering that for future treatment only Rs.10,000/- was awarded and no amount was granted for loss of amenities and considering the pain and sufferings, we are of the opinion that no interference is required in the compensation granted for pain and suffering especially because no amount was awarded for loss of amenities. We see no ground to interfere in the award or enhance the compensation awarded by the tribunal as only just and reasonable compensation was awarded. Hence both appeal and cross objection are dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

2nd July, 2007